

William D. Hyslop
United States Attorney
Eastern District of Washington
Thomas J. Hanlon
Assistant United States Attorney
Richard C. Burson
Assistant United States Attorney
402 E. Yakima Ave., Suite 210
Yakima, WA 98901
Telephone: (509) 454-4425

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DONOVAN CLOUD,

Defendant.

NO: 1:19-CR-02032-SMJ-2

GOVERNMENT’S RESPONSE TO
MOTION FOR BILL OF
PARTICULARS

Plaintiff, United States of America, by and through William D. Hyslop, United States Attorney for the Eastern District of Washington, and Thomas J. Hanlon and Richard C. Burson, Assistant United States Attorneys for the Eastern District of Washington, hereby responds to Motion for Bill of Particulars (ECF No. 95).

Facts

Emergency Calls

On June 8, 2019, at approximately 4:04 p.m., the Yakima County Sheriff’s Office (“YCSO”) received an emergency call from a victim who reported that she and others had been

1 shot. The victim reported that she was traveling in a vehicle. Officers quickly located the
2 vehicle on Evans Road, White Swan, Washington. YCSO deputies discovered three adult
3 victims who had suffered gunshot/pellet wounds.¹ After conducting an interview, the deputies
4 learned that the victims had just fled from 5151 Medicine Valley Road, White Swan,
5 Washington. The deputies were advised that there were deceased persons at the above address.
6

7 Law enforcement officers responded to the residence and discovered multiple deceased
8 persons.² It was clear that the suspect(s) fled from the property.

9 At approximately 4:48 p.m., an emergency call was received. The reporting party
10 advised of a carjacking in progress. Law enforcement officers immediately responded to the
11 emergency call. The carjacking scene was a short distance, approximately 10 miles, from the
12 homicide scene.
13

14 **Investigation**

15 During the investigation, law enforcement learned that a silver colored 2008 Chevrolet
16 Silverado (“Silverado”) was found broken down on the side of the road near the carjacking
17 scene. Law enforcement subsequently learned that the owner of the Silverado had been
18 murdered at 5151 Medicine Valley Road. Law enforcement believed that the murderer(s) stole
19 the Silverado from 5151 Medicine Valley Road. The Silverado broke down approximately 10
20 miles from 5151 Medicine Valley Road. The occupants exited the Silverado and went looking
21 for another vehicle to steal to flee from the area.
22

23 On the afternoon of June 8, 2019, a family (two adults and children) were at home. At
24 approximately 4:45 p.m., the Defendants approached the residence. James Dean Cloud
25 (“James”) was armed with a shotgun. Donovan Quinn Carter Cloud (“Donovan”) was armed
26
27

28 ¹ One of the three individuals was deceased.

² All of the deceased victims were adults.

1 with a pistol. Both demanded keys for a vehicle. Donovan held his pistol to the head of Minor
2 A while demanding that the property owner give him the keys for a vehicle. James and the
3 property owner entered the residence to obtain the keys. The property owner provided a set of
4 truck keys to James. James handed the keys to Donovan. Minor A was forced to enter the bed
5 of the truck. Donovan entered the driver's side of the truck. James entered the passenger side of
6 the truck. Donovan quickly backed the truck into the yard. Donovan put the truck in drive and
7 began to accelerate. Minor A quickly jumped from the truck and was able to escape. Donovan
8 and James fled in the stolen truck.

10 Both the murders and the carjacking incident occurred within the external boundaries of
11 the Yakama Nation.

13 On July 17, 2019, a five count superseding indictment was filed. (ECF No. 59). As
14 relevant here, the Defendants have been charged with Kidnapping Minor A. On July 18, 2019,
15 an arraignment hearing was held.

16 Count 4 of the superseding indictment (ECF No. 59) reads:

17 On or about June 8, 2019, in the Eastern District of Washington, the Defendants,
18 DONOVAN QUINN CARTER CLOUD and JAMES DEAN CLOUD, both Indians, who
19 were not parents, grandparents, brothers, sisters, aunts, uncles, or individuals having legal
20 custody of Minor A, did unlawfully kidnap, abduct, confine, and seize a person identified
21 as Minor A, who had not then attained the age of eighteen years, all within the boundaries
22 of the Yakama Nation Indian Reservation . . .

22 **Argument**

23 Under Federal Rule of Criminal Procedure 7(f), the Defendant may move for a bill of
24 particulars before or within 14 days after arraignment or at a later time if the court permits.
25 Typically, "a motion for a bill of particulars is appropriate where a defendant requires
26 clarification in order to prepare a defense." *United States v. Long*, 706 F.2d 1044, 1054 (9th Cir.
27 1983).
28

1 “The purpose of a bill of particulars are to minimize the danger of surprise at trial and to
2 provide sufficient information on the nature of the charges to allow preparation of a defense.
3 These purposes are served if the indictment itself provides sufficient details of the charges and if
4 the government provides full discovery to the defense.” *United States v. Mitchell*, 744 F.2d 701,
5 705 (9th Cir. 1984). A defendant “is not entitled to know all the evidence the government intends
6 to produce, but only the theory of the government’s case.” *United States v. Ryland*, 806 F.2d
7 941, 942 (9th Cir. 1986), *cert. denied*, 481 U.S. 1057 (1976); *Yeargain v. Untied States*, 314 F.2d
8 881, 882 (9th Cir. 1963).

9
10 In determining if a bill of particulars should be ordered, a court should consider whether
11 the defendant has been adequately advised of the charges through the indictment and all other
12 disclosures made by the government. *United States v. Giese*, 597 F.2d 1170, 1180 (9th Cir.),
13 *cert. denied*, 444 U.S. 979 (1979). Full discovery will obviate the need for a bill of particulars.
14 *Id.*; *United States v. Clay*, 476 F.2d 1211, 1215 (9th Cir. 1973).

15
16 In the instant case, the government has provided over 4,000 pages of discovery. All
17 known police reports documenting the carjacking/kidnapping have been provided in discovery.
18 There is no reason that the Defendant cannot discern the information contained therein and
19 prepare an intelligent defense.
20

21 An indictment is inadequate when it fails to place alleged crimes within any time frame.
22 *United States v. Cecil*, 608 F.2d 1294 (9th Cir. 1979). Here, the precise date of the
23 carjacking/kidnapping has been identified in the superseding indictment. (ECF No. 59).
24

25 The Defendant argues that a bill of particulars is required as Count 4 of the superseding
26 indictment (kidnapping) fails to include the charging language of the kidnapping statute and fails
27 to include the essential element of holding.
28

1 The essence of kidnapping under federal law is the involuntariness of the seizure or
2 detention. *Gawne v. United States*, 409 F.2d 1399, 1403 (9th Cir. 1969). A kidnapping which
3 occurs on an Indian reservation is a general intent crime and “the prosecution need not prove that
4 the defendant committed the kidnapping for any particular purpose.” *United States v. Sneezer*,
5 983 F.2d 920, 922 (9th Cir. 1992). An indictment is not insufficient as to fail to charge an
6 offense under the kidnapping statute, by reason of omission of the words “and held.” *Hall v.*
7 *United States*, 410 F.2d 653, 659 (4th Cir. 1969). “An indictment charging kidnapping under
8 1201 is sufficient, even though it does not charge that the person kidnapped was held “for
9 ransom or reward or otherwise.” *United States v. Boykin*, 794 F.3d 939, 9470948 (8th Cir. 2015).

10 Here, the indictment and discovery apprise the Defendant of the charges against him, so
11 that he can defend himself against the charges. Therefore, a bill of particulars is unnecessary.
12
13
14

15 DATED this 17th day of September, 2019.

16 WILLIAM D. HYSLOP
17 United States Attorney

18 s/Thomas J. Hanlon
19 THOMAS J. HANLON
20 Assistant United States Attorney

21 s/Richard C. Burson
22 RICHARD C. BURSON
23 Assistant United States Attorney
24
25
26
27
28

1 I hereby certify that on September 17, 2019, I electronically filed the foregoing with the
2 Clerk of the Court using the CM/ECF System which will send notification of such filing to the
3 following: Richard A. Smith
4

5
6 s/THOMAS J. HANLON
7 Thomas J. Hanlon
8 Assistant United States Attorney
9 United States Attorney's Office
402 E. Yakima Avenue, Suite 210
Yakima, WA 98901
Phone: (509) 454-4425
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28